

No. 12433

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

FIRST NATIONAL BENEFIT SOCIETY, a corporation,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITIONER'S PETITION FOR REHEARING.

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PAUL P. O'BRIEN,

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The Petitioner above named respectfully petitions the court to grant a rehearing upon the above numbered and entitled appeal, and in support of such request shows unto the court:

The above matter was heard by this Court on review from the decision of the Tax Court of the United States. A *per curiam* decision was rendered by this Court on July 11, 1950 as follows:

The decision of the Tax Court is affirmed upon the authority of *First National Benefit Society v. Stuart*, 9 Cir., 134F. 2d 438; *Id.*, 9 Cir., 152 F. 2d 298; *Commissioner v. National Reserve Ins. Co.*, 9 Cir., 160 F. 2d 956."

The case of *First National Benefit Society v. Stuart*, 9 Cir., 134 F. 2d 438, did not involve the matter of the deduction claimed by Petitioner under the provisions of Section 207(c) (1) (A), which reads as follows:

(A) the net addition required by law to be made within the taxable year to reserve funds (including in the case of assessment insurance companies the actual deposit of sums with State or Territorial officers pursuant to law as additions to guarantee or reserve funds);

This matter was not involved in the above cited case. The opinion in that case did dispose of Petitioner's contention that it was entitled to a deduction under the provisions of Section 207(c)(3) adversely to Petitioner, but neither the briefs nor the decision of the Court in that case involved the above claim for a deduction of the amounts added during the year to the guarantee fund deposited with the Arizona State Treasurer.

From an examination of the case of *Commissioner v. National Reserve Ins. Co.*, 9 Cir., 160 F. 2d 956, it appears that this question was not raised in that case. There is a discussion of the above decision of the deposit required by the Arizona Benefit Association law to be made with the State Treasurer. However, that discussion appears to be relative to the qualification of that reserve as a part of the necessary reserve to qualify the taxpayer as a life insurance company, and not as to a deduction under 207(c)(1)(A), if the taxpayer is to be classified under Section 207. This deduction was claimed by Petitioner in the present case and was considered by the Tax

Court which held against the deduction, but we believe the matter of this deduction has not been passed on by this Court.

The fact that this deduction of additions to guarantee or reserve funds is provided for in the case of companies classifying under 207 of the Act indicates that the word "guarantee" or "reserve" funds is not required to be the technical life insurance reserve required for the classification of a taxpayer as a life insurance company otherwise the classification would be under 201 rather than 207.

This Court in its opinion above cited has held that Petitioner is a Mutual Insurance Company other than life under the provisions of Section 207. This also has been the holding of the Tax Court and the Treasury Department.

Since the reserve, additions to which constitute a deduction under 207(c) (1) (A) are allowed to companies whose reserves do not classify them as life insurance companies this "reserve" must be something different than that contemplated in Section 201.

We submit then that Petitioner is entitled to a deduction under the provisions of said Section 207(c) (1) (A) in the sum of \$4,518.71 deposited with the State Treasurer during the year 1939, and that Petitioner should have a rehearing in this particular.

Respectfully submitted,

ROBERT R. WEAVER,

Attorney for Petitioner.

Certificate of Counsel.

I, Robert R. Weaver, counsel for the Petitioner above named, hereby certify that, in my judgment, the foregoing petition for rehearing is well founded, and that it is not interposed for delay.

Witness my hand this 9th day of August, 1950.

ROBERT R. WEAVER,
Attorney for Petitioner.